

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

USDC SDNY
DOCUMENT
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ANGEL GARCIA, :
 Movant/Petitioner :
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 v. :
 :
 UNITED STATES OF AMERICA, :
 Respondent. :
 :
 :

08 Civ. 3900(HB)(DFE)
 03 Crim. 1098(HB)

(This is not an ECF case)

PETITIONER'S MOTION OPPOSING COURT'S GRANTING
 GOVERNMENT A 90-DAY EXTENSION OF TIME IN WHICH TO
 FILE A RESPONSE, AND MOTION OPPOSING COURT'S REFERRING
 WITHOUT FIRST GIVING PETITIONER NOTICE, AND AN OPPORTUNITY
 TO OPPOSE COURT'S APPARENT EXPARTE ACTION IN THIS CASE

COMES NOW, Petitioner, Angel Garcia, and in his Motion herein, as stated above, respectfully moves this Court to grant the motion, and as grounds and reasons therefor respectfully states:

1. That this Court ordered the Government to file a response to the Petitioner's Motion To Vacate on or before 16 June 2008. That the Government never sent Petitioner a copy of its motion for an enlargement of time, if indeed one was filed. Under the rules of the Court and under the rules of pleadings and practice, each party shall send the other party copies of all pleadings, motions, and documents filed in the proceeding. Moreover, all pleadings are required to have a Certificate Of Service, indicating to the Court that a copy of the pleading was mailed or sent to the other party .

It is axiomatic that a motion for an enlargement of time must be filed within the time allowed for filing the pleading.

It borders on the verge of "trickery and deception" for the Government to wait until 13 June 2008, just 3-days before its response was due to file for an extension of time. We are certain that the

Government did not become aware of the colleague's leaving the office until 13 June 2008. Moreover, petitioner was informed by a member of the Clerk of Court's Offices on 25 April 2008, when the Motion To Vacate Sentence was filed, that the Assistant United States Attorney who was assigned to the case was no longer in the United States Attorney's Office. Hence, the Government had to have known before 25 April 2008 that the Assistant United States Attorney assigned to the case had left the office, and for the Government to represent to this Court that it only became privy to that knowledge only on 13 June 2008, is, in petitioner's opinion, not a true statement.

For if petitioner knew in April 2008, that the assigned Assistant United States Attorney had left the office, then so did the Government. So, when the peitioner was filed in April 2008, the Assistant was not in the office; and the Assistant was not in the office in June 2008. The Government is not being candid with this Court.

2. That the Government did not send petitioner a motion for an enlargement of time. Why? If such motion was filed, and granted, then why did not the Court send petitioner a copy of the Order granting such an extension?

Accordingly, petitioner was never informed that a Magistrate Judge had been assigned the case; this Court never informed the petitioner that this case had suddenly been assigned to a Magistrate Judge, and also, why did this Court only assign to the Magistrate Judge only two documents to rule on in this case?

Petitioner would respectfully ask this Court, why could not the Court ruled on these two motions itself?

3. That his appears to be a classic case of "forum shopping", because the Magistrate states:

"after August 4, 2008 the parties must address all correspondence to Judge Baer, and must no longer include my initials after the docket number." (Emphasis added)

Magistrates Memorandum and Order Dated July 8, 2008.

What was the purpose of having the Magistrate rule on these two pleadings, and not the Court? Why take the case from the Magistrate after these rulings, and then return the case back to this Court?

4. That Petitioner feels that this Court is allowing the Government to take a tactical advantage over the petitioner by granting the Government a 90-day extension for the weak and frail excuse given the Court by the Government. This Court would not have been so obliging had petitioner would have done as did the Government.

5. That petitioner feels that he will not be treated fair, just, and impartial by this Court. Petitioner believes that this Court will not render a fair, just, and a disinterested decision in this case.

Petitioner is a poor and humble person who is trying to challenge the sentence imposed on him by this Court; petitioner is a lay person in the law, and has placed all of his hopes, faith and trust in this Court to treat him fair and just. Petitioner feels that the Government will resort to any tactic not to let this Court vacate this judgment and sentence, even if the Government knows that the sentence was unlawfully imposed.

Petitioner feels as if he is at a great disadvantage in this case, petitioner also feels that this Court will not be fair and

impartial to him in this matter.

Petitioner moves this Court to grant the motion herein.

Respectfully,

Dated: July 14, 2008

Angel Garcia Jr.
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CERTIFICATE OF SERVICE

This is to certify that a copy of the foregoing motion was mailed on the 14 day of July, 2008; postage first class prepaid to:

Natalie Lamarque, Esq.
Assistant United States Attorney
Southern District Of New York
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7/21/08 - I treat this motion as a motion for reconsideration of my Memorandum and Order dated July 8, 2008. I have reconsidered that order but I adhere to its rulings.

Angel Garcia Jr.
Angel Garcia
Pro Se

Douglas F. Eaton